



Nambucca Shire Council

Public Land Reclassifications

Planning Proposal

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Nambucca Shire Council*

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1.0 Preliminary

1.1 Context

This planning proposal has been drafted in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979*, and 'A guide to preparing planning proposals' (DoP, 2009). A gateway determination under Section 66 of the Act is requested.

This planning proposal proposes the reclassification of Community classified land to Operational Land. Each portion of land subject to reclassification is identified in Section 1.2 of this report. More information relating to these reclassifications is provided in the public hearing report prepared by Bennel and Associates (Attachment 1).

1.2 Subject Land, Land Use and Zone

The following land is proposed to be reclassified.

1.2.1 Part Lot 31 DP248561 Yarrowonga St Macksville

Figure 1 below illustrates the location context of Lot 31 DP248561 Yarrowonga St Macksville, which is located in the south Macksville Industrial Estate approximately 2.3km from the Macksville CBD. The land is presently zoned IN2 Light Industrial which adjoins RE1 Public Reserve to the south, north coast rail to the east and general industrial land to the north.

Figure 1 Location Context Part Lot 31 DP248561 Yarrowonga St Macksville

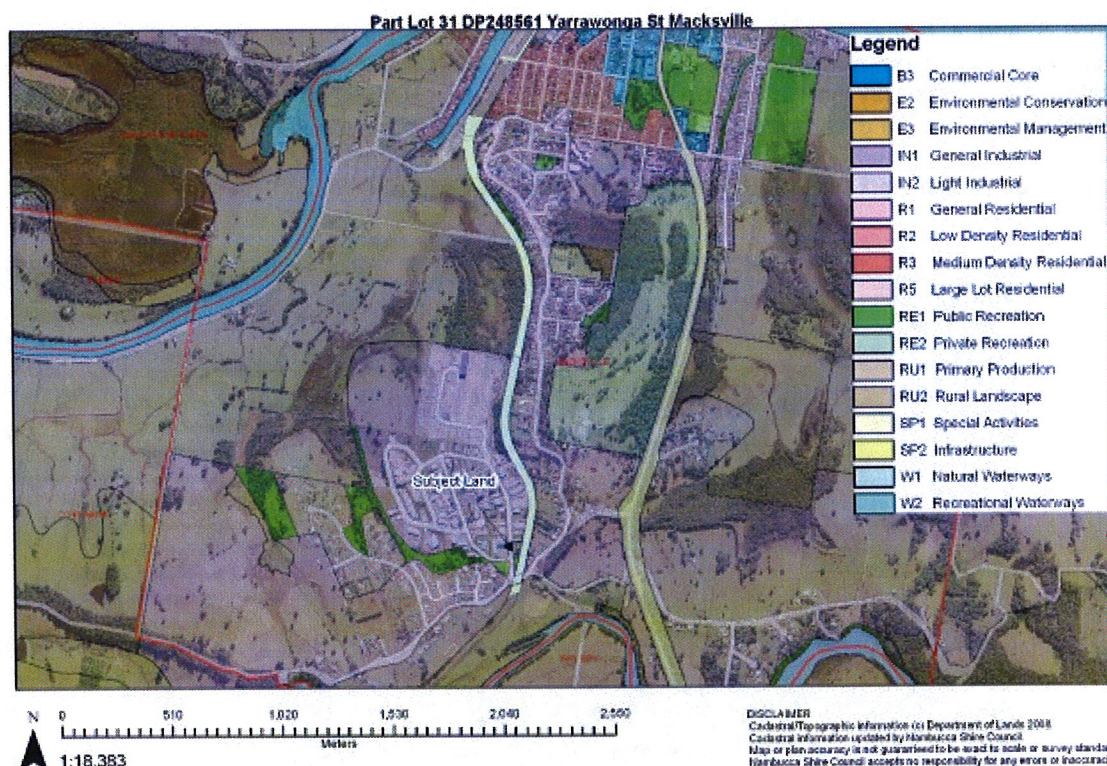
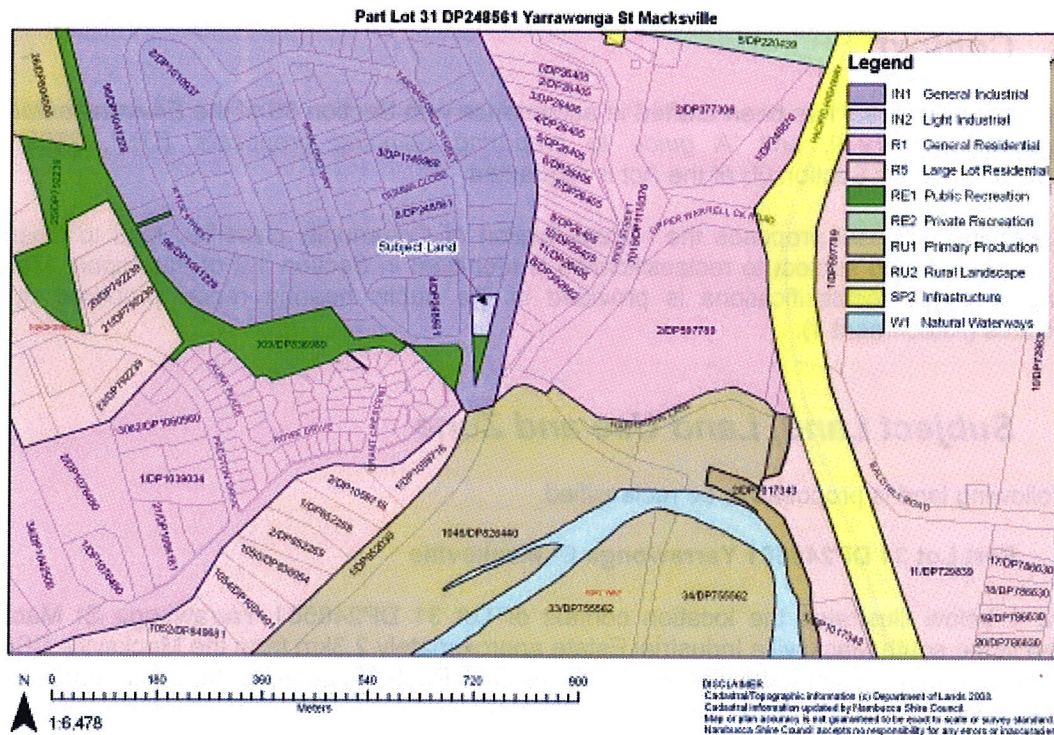


Figure 2 Land Zoning Part Lot 31 DP248561 Yarrowonga St Macksville



1.2.2 Part Lot 40 DP711098 Kingsworth Estate

Figure 3 and 4 below identifies land at Kingsworth Estate Nambucca Heads that is proposed to be reclassified from Community to operational land. The land is located at the western end of Kingsworth Estate and is presently part of a public reserve. This reclassification is part of a land swap which will provide Council with a greater opportunity to provide access to the Council reserve.

Figure 3 Location Part Lot 40 DP711098 Kingsworth Estate

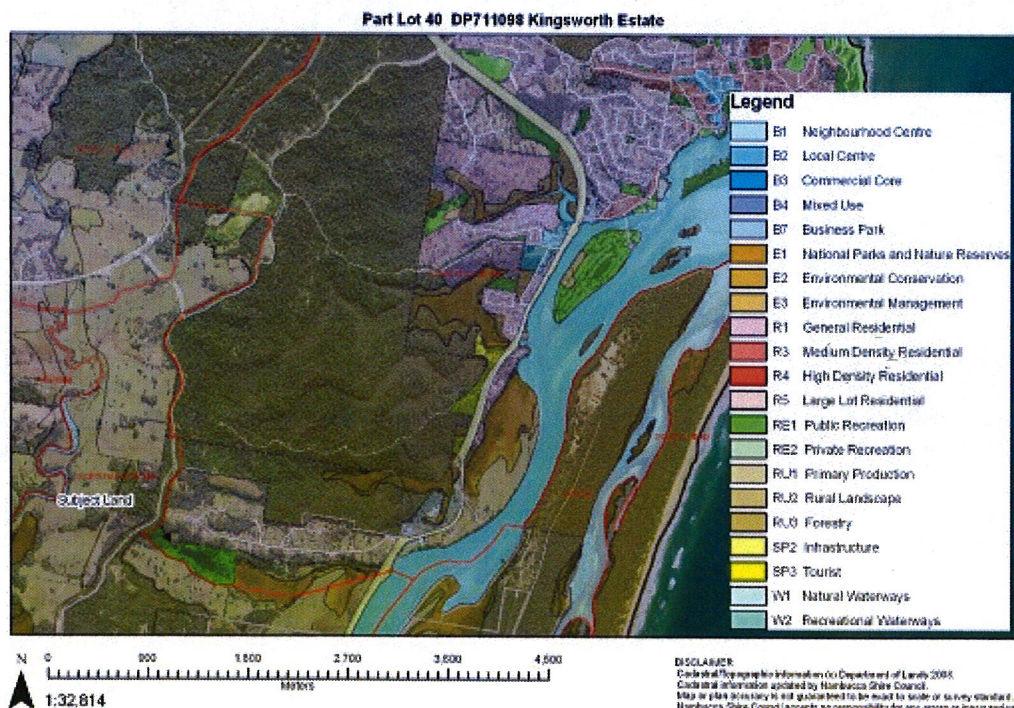
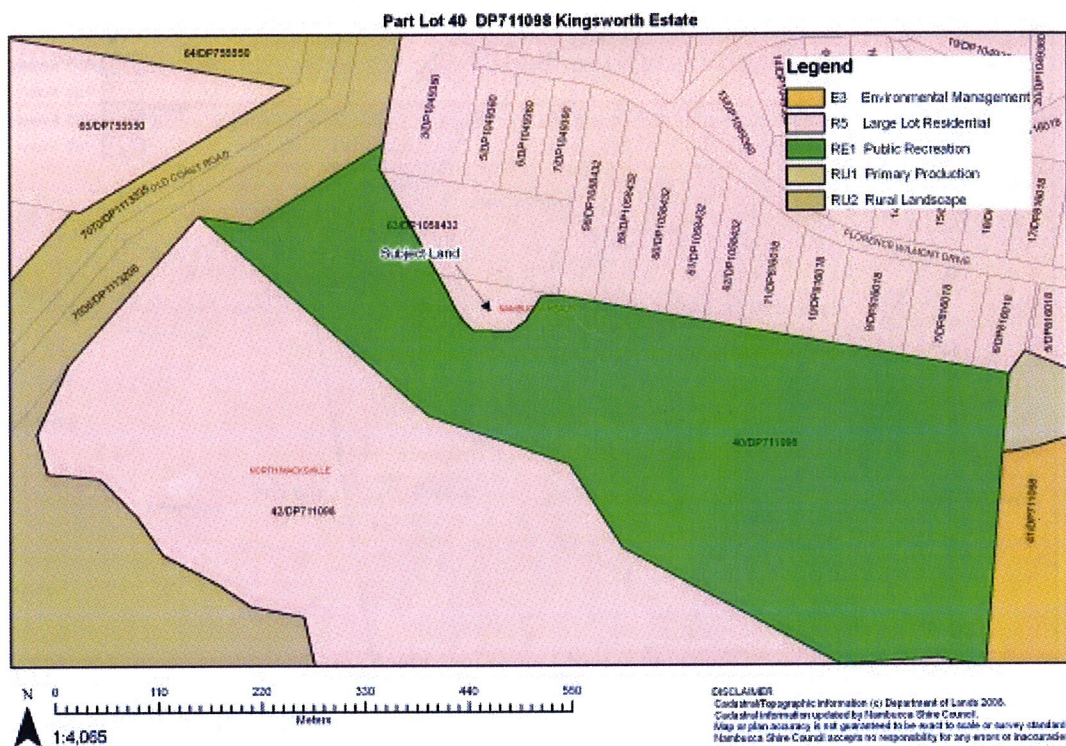


Figure 4 Land Zoning Part Lot 40 DP711098 Kingsworth Estate



1.2.3 Lot 163 DP822649 Eungai (Eungai Pre School)

Figure 5 and 6 below show the location of land at Eungai Creek that is proposed to be transferred from community to operation land. The land is located near to the Rural Village of Eungai Creek at the southern end of the shire. The land is approximately 1100sqm in size. Although the land is zoned for rural purposes it is presently used as the local preschool.

Figure 5 Location Lot 163 DP822649 Eungai (Eungai Pre School)

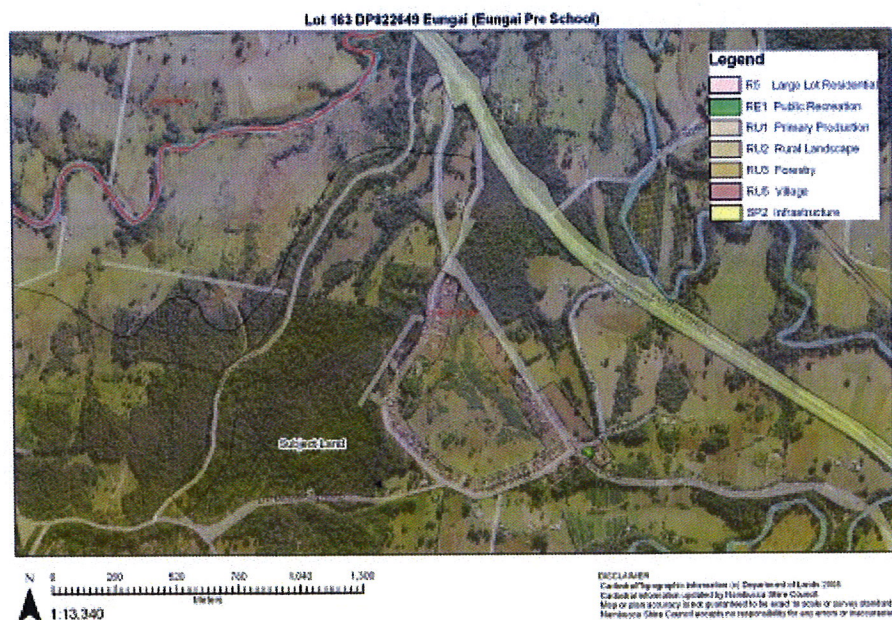
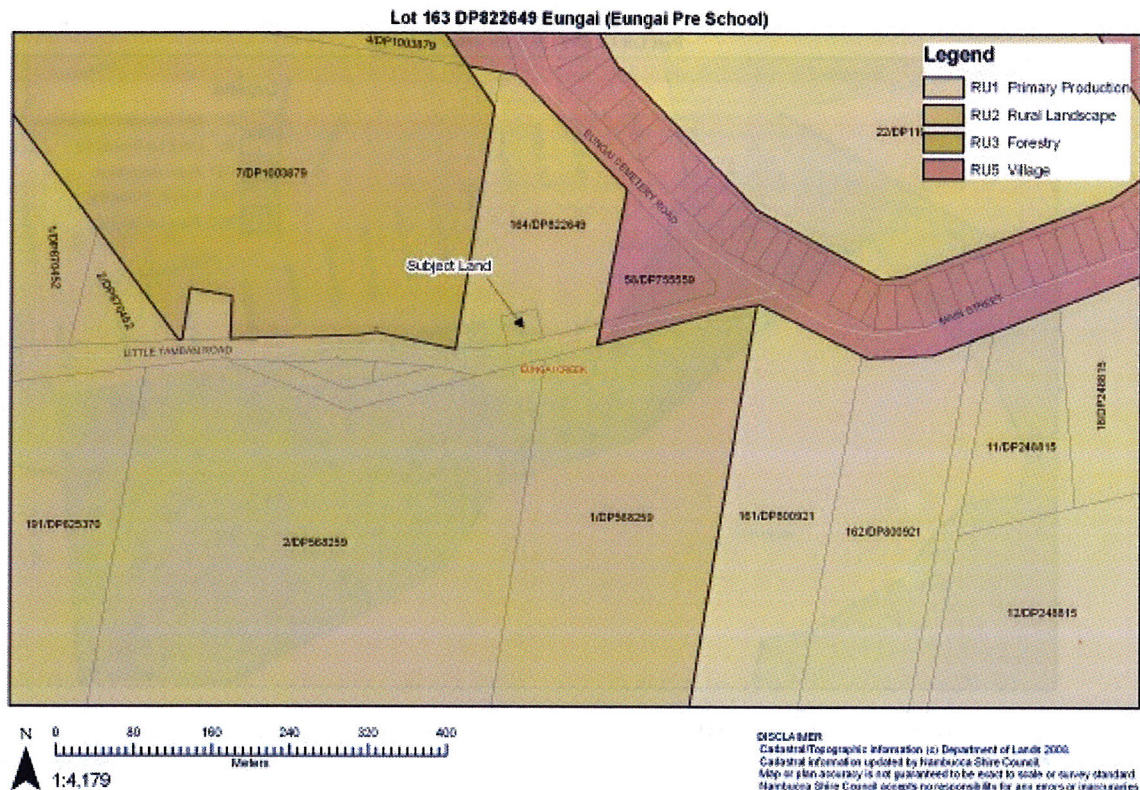


Figure 6 Land Zone Lot 163 DP822649 Eungai (Eungai Pre School)



1.4 Background

Prior to commencing the drafting of the Nambucca LEP 2010, Council had commenced a general housing keeping amendment of the Nambucca LEP 1995. Within this house keeping amendment it was proposed to reclassify and rezone three (3) parcels of land, being:

- Part Lot 31 DP248561 Yarrowonga St Macksville;
- Part Lot 40 DP711098 Kingsworth Estate; and
- Lot 163 DP822649 Eungai (Eungai Pre School)

Council progressed the reclassifications within the house keeping amendment, Nambucca LEP 1995 Amendment No. 64. The reclassifications were exhibited and a public hearing was held to address any community concerns.

Upon completion of the public hearing Council staff reported the proposed reclassification to Council at which time changes were made to address community concerns. Also given the progress of the LEP 2010, Council resolved to incorporate the reclassification amendment into the NLEP 2010. Copies of the Council reports and minutes are attached to this Planning Proposal (Attachment 1).

The Nambucca LEP 2010 was exhibited in October/November 2009, two workshops were held and no submissions were received in regards to the reclassification of this land. The NLEP 2010 was made by the minister on 30 July 2010. In making the plan, the Minister has given all of subject land parcels to be reclassified the appropriate zone but has not included the reclassification of the land from community land to operational land under Schedule 4 of NLEP 2010.

The DoP provided the following advice in relation to this matter:

The three parcels of land listed in Part 1 of Schedule 4 which were to be reclassified operational have been omitted because the procedure for the public hearing was not in accordance with Section 68 of the Act in relation to the Nambucca LEP 2010. Council is encouraged to include this land in a planning proposal to amend the plan.

Although it is considered that adequate justification was put to the DoP to retain the respective parcels of land in Schedule 4, the DoP decided to delete their inclusion in the schedule for the reclassification of public land. In discussions with the DoP, Council was verbally advised that Parliamentary Counsel and DoP Legal had concerns that the public hearing was held under the previous LEP 1995 Amendment and not the Nambucca LEP 2010.

The purpose of this planning proposal is to reclassify the subject land from community to operational land in accordance with previous Council resolutions. Further detailed information regarding the reclassification of this land is included as attachment 1 (the facilitator report prepared for Councils consideration as a result of the public hearing previously completed).

Part 1 Objectives or Intended outcomes

The primary objective of this LEP Amendment is to:

Amend the classification of the Part Lot 31 DP248561 Yarrawonga St Macksville, Part Lot 40 DP711098 Kingsworth Estate, Lot 163 DP822649 Eungai from Community to Operational Land pursuant to Clause 30 of the Local Government Act 1993.

Part 2 Explanation of Provisions

The objectives of the LEP amendment will be achieved by:

- 1 Amending Schedule 4 Part 1 of the Nambucca LEP 2010 to include the following:

Part Lot 31 DP 248561 Yarrawonga St Macksville;
Part Lot 40 DP 711098 Kingsworth Estate; and
Lot 163 DP 822649 Eungai (Eungai Pre School)

Part 3 Justification

Section A – Need for the Planning Proposal

1 *Is the Planning Proposal the Result of any Strategic study or Report*

No, the land has been previously identified as surplus to Council needs and there for has been identified for disposal.

2 *Is the Planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

As Council wishes to dispose of this land it must be reclassified in accordance with the relevant provisions of the Local Government Act.

3 *Is there a net community benefit?*

Council envisages that this planning proposal will result in the following net community benefits in consideration of the criteria set out in the NSW Department of Planning's 'draft Centres Policy - Planning for Retail and Commercial Development':

Part Lot 31 DP248561 Yarrawonga St Macksville

This site provides a visual buffer to the railway line and provides a landscape entryway to the South Macksville Industrial Estate. However, the cleared nature of the land and its location below the nearby residential areas and industrial uses on the opposite side of Yarrawonga Street limits its potential as an acoustic buffer. This site's proximity to the railway line and intersecting roads including Binalong Way, Upper Warrell Creek Road and Yarrawonga Street also limit its potential as a passive recreation area; it would be unsuitable as a site for a playground.

The shape of the land parcel and need for setbacks to the street and railway line limit the potential of the southern half of the site to be used for industrial purposes. The site could be developed for a dual purpose: light industrial activities and passive recreation purposes.

Any light industrial use should provide a sufficient landscape buffer to the railway line and adjoining residences fronting Upper Warrell Creek Road to screen the use from these residences. Any light industrial use would also need to meet acceptable noise criteria to ensure these residences are not adversely impacted. It is to be noted that a tall industrial building, with low noise levels, could provide some acoustic buffering to the nearby residents.

Any passive recreation use should provide a suitable entryway landscape area, possibly signifying the entry to the industrial estate, and could be supplemented with outdoor eating facilities to provide a lunchtime sitting area for workers in the industrial estate; it is acknowledged that there is no centralised outdoor recreation facility elsewhere in the industrial estate.

Part Lot 40 DP711098 Kingsworth Estate

The reclassification of this land is the result of a proposed boundary alteration; a land swap between the rural land and open space land. The exchange of land will result in a nett increase in the reserve of 8,940 m²; 4,960 m² of reserve is proposed to be zoned for rural residential purposes and 1.39 hectares of rural land is proposed to be rezoned for open space purposes. The proposal will increase the street frontage of the reserve from 60.57 m to 242.67 m and will allow a dedicated road to the existing dam to be used for emergency access for water in times of drought and for water to be used as a dust suppressant at other times.

It is accepted that the proposed land swap will provide a community benefit in terms of improved access. It is also accepted that an uncontrolled access to the reserve has the potential of creating land use conflicts in terms of vehicles entering the reserve. It is considered that issues relating to access can be managed through an appropriate Plan of Management for the reserve. The Plan of Management will need to include designated areas for vehicular access and the times that

vehicles will be allowed entry to the reserve. It is to be noted that the preparation of any Plan of Management for the reserve is subject to a public consultation process wherein detailed issues concerning the spatial and temporal access arrangements can be addressed.

Lot 163 DP822649 Eungai (Eungai Pre School)

While Local Government once had a lead role in the provision of childcare facilities and preschool facilities, these functions are now largely run by the private sector or non-profit organisations following the introduction of new avenues of Government Support which has increased their economic viability. This support is in the form of direct support for the facilities and indirect support through family child support schemes. Given these changes, it is reasonable for Council to discharge such lands to an alternative Preschool provider.

The social implications of reclassifying this land are minimal.

Implications of not proceeding at this time

Should Council not proceed with the reclassification at this time, there is unlikely to be any negative implications.

Section B – Relationship to strategic planning framework.

4 *Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy.*

This planning proposal is not inconsistent with this the Mid North Coast Regional Strategy.

5 *Is the planning proposal consistent with the local Council's Community Strategic Plan, or other strategic plan?*

The planning proposal is consistent with the Nambucca Structure Plan and other local strategies.

6 *Is the Planning Proposal consistent with applicable state environmental planning policies (SEPP's)?*

Yes – see Appendix 1

7 *Is the planning proposal consistent with applicable Ministerial Directions (S117 directions)?*

Yes – see Appendix 2

Section C – Environmental, social and economic impact

- 8 *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal.***

No, there is unlikely to be any detrimental impacts to critical habitat, threatened species, populations or ecological communities, or their habitats.

- 9 *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?***

The proposal is unlikely to result in any detrimental impacts associated with the reclassification of the subject land.

Construction of an access through the Council Reserve at Part Lot 40 DP711098 Kingsworth Estate, may result in some environmental impacts. However, these can be managed appropriately when the design and construction of the access is budgeted for and commenced.

- 10 *How has the planning proposal adequately addressed any social and economic effects?***

As stated previously these reclassifications have been publicly exhibited and a public hearing was held in relation to these reclassifications during the preparation of the Nambucca LEP 2010.

The results of the exhibition and the public hearing are presented in the facilitators report related to the public hearing. Consideration of the matters raised by the public resulted in amendments to the proposed zoning of the land.

The following changes were made to the LEP 2010:

Yarrawonga Street, Macksville

- The land was zoned Part IN2 Light Industry and Part RE1 Public Reserve instead of all IN1 General Industry;
- Only the portion of the land zoned IN2 Light Industry is proposed to be reclassified.

Kingsworth Estate Macksville

- Council engaged a land valuation over the land to be reclassified and disposed off prior to resolving to agree to the reclassification;
- Council also resolved to prepare a Plan of Management for this land

Eungai

Nil

Section D – State and Commonwealth Interests

11 *Is there adequate public infrastructure for the planning proposal?*

Yes

12 *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

A gateway determination is yet to be issued, however it is unlikely Council will be required to consult with any state or Commonwealth Agencies regarding these reclassifications.

Part 4 Community Consultation

In accordance with Section 4.5 of '*A guide to preparing local environmental plans*' the public land reclassification is not considered a low impact proposal and the relevant exhibition period is 28 days. Nevertheless, this reclassification was exhibited previously and the public hearing has already been undertaken and as such it is intended that the exhibition period for the planning proposal will be for 14 days only.

In summary it is intended to exhibit the proposed reclassification for 14 days in accordance with Section 4.5 of '*A guide to preparing local environmental plans*' and it is not considered necessary to hold an additional public hearing.

Any alternative community consultation should be clearly identified by the DoP.

Appendix 1 - State Environmental Planning Policies

The following State Environmental Planning Policies (SEPP) have been considered in the preparation of the planning proposal for the reclassification of the subject land:

- **State Environmental Planning Policy No. 44 – Koala Habitat Protection**

SEPP 44 encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.

Under SEPP 44, potential koala habitat is defined as areas of native vegetation where the trees listed in Schedule 2 of the SEPP constitute at least 15% of the total number of trees in the upper or lower strata of the tree component. A koala habitat assessment is required for any significant development in such areas.

SEPP 44 may be applicable to the future construction of access on Part Lot 40 DP711098 Kingsworth Estate. Threatened species investigations undertaken on the land as part of any future development will determine if the land is core Koala Habitat.

- **State Environmental Planning Policy (Infrastructure) 2007**

The SEPP supports greater flexibility in the location of infrastructure and service facilities and allows efficient development, redevelopment or disposal of surplus government owned land.

No infrastructure is proposed to be constructed as part of this reclassification. However, the provisions of this SEPP may be implemented during future embellishment of the Council Reserve at Yarrawonga St Macksville or Lot 40 DP711098 Kingsworth Estate.

- **State Environmental Planning Policy (Rural Land)**

The aim of this policy is to facilitate the orderly and economic use and development of rural lands for rural and related purposes.

The Eungai Pre School is located on Rural Zoned Land and the provisions of this SEPP apply. However the land is an existing small rural parcel presently operating as Pre School. The reclassification of this land is unlikely to have any detrimental implications for rural land.

Appendix 2 - Section 117 Directions

A number of directions under Section 117 of the EP & A Act 1979 are relevant to this planning proposal.

1 Employment and Resources

Direction 1.1 Business and Industrial Zones

The objectives of this direction are to:

- a encourage employment growth in suitable locations,
- b protect employment land in business and industrial zones, and
- c support the viability of identified strategic centres.

This direction applies when a council prepares a draft LEP that affects land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).

A draft LEP shall:

- a give effect to the objectives of this direction,
- b retain the areas and locations of existing business and industrial zones,
- c not reduce the total potential floor space area for employment uses and related public services in business zones,
- d not reduce the total potential floor space area for industrial uses in industrial zones, and
- e ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.

Council owned industrial zoned land at Yarrawonga St is presently classified as community land. The purpose of this amendment is to reclassify this land to operational which will facilitate the disposal of this land and create an opportunity for a future light industry to occur on the land.

Direction 1.2 Rural Zones

The objective of this direction is to protect the agricultural production value of rural land.

This direction applies when a council prepares a draft LEP that affects land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).

A draft LEP shall:

- a not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.
- b not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).

A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are:

- a justified by a strategy which:
 - i gives consideration to the objectives of this direction,
 - ii identifies the land which is the subject of the draft LEP (if the draft LEP relates to a particular site or sites), and
 - iii is approved by the Director-General of the Department of Planning, or
- b justified by an environmental study prepared in accordance with section 57 of the *Environmental Planning and Assessment Act 1979* which gives consideration to the objectives of this direction, or
- c in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- d is of minor significance.

The reclassification of the land currently being used for the Eungai pre-school is of minor significance.

Direction 4.4 Planning for Bushfire Protection

The objectives of this direction are:

- a to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and
- b to encourage sound management of bush fire prone areas.

This direction applies when a council prepares a draft LEP that affects, or is in proximity to land mapped as bushfire prone land.

In the preparation of a draft LEP a Council shall consult with the Commissioner of the NSW Rural Fire Service under section 62 of the EP&A Act, and take into account any comments so made.

A draft LEP shall:

- a have regard to *Planning for Bushfire Protection 2006*,
- b introduce controls that avoid placing inappropriate developments in hazardous areas, and
- c ensure that bushfire hazard reduction is not prohibited within the APZ.

A draft LEP shall, where development is proposed, comply with the following provisions, as appropriate:

- a provide an Asset Protection Zone (APZ) incorporating at a minimum:
 - i an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and
 - ii an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,
- b for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the draft LEP permit Special Fire Protection Purposes (as defined under section 100B of the *Rural Fires Act 1997*), the APZ provisions must be complied with,
- c contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,
- d contain provisions for adequate water supply for fire fighting purposes,
- e minimise the perimeter of the area of land interfacing the hazard which may be developed,
- f introduce controls on the placement of combustible materials in the Inner Protection Area.

Although the subject land is Bushfire Prone land or Part Bushfire Prone Land, the reclassification and future disposal of this land is of minor significance. Future Development applications on any of the subject land will be required to address Planning for Bushfire Protection as appropriate.

6 Local Plan Making

Direction 6.1 Approval and Referral Requirements

The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

A draft LEP shall:

- a minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and
- b not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the council has obtained the approval of:
 - i the appropriate Minister or public authority, and
 - ii the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General),prior to a certificate under section 65 of the Act being issued, and
- c not identify development as designated development unless the council:

- i can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and
- ii has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to a certificate being issued under section 65 of the Environmental Planning and Assessment Act 1979.

The reclassification of the subject land does not require any concurrence provisions.

Direction 6.2 Reserving Land for Public Purposes

The objectives of this direction are:

- a to facilitate the provision of public services and facilities by reserving land for public purposes, and
- b to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

A draft LEP shall not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

When a Minister or public authority requests a council to reserve land for a public purpose in a draft LEP and the land would be required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*, the council shall:

- a reserve the land in accordance with the request, and
- b include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), and
- c identify the relevant acquiring authority for the land.

When a Minister or public authority requests a council to include provisions in a draft LEP relating to the use of any land reserved for a public purpose before that land is acquired, the council shall:

- a include the requested provisions, or
- b take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) with respect to the use of the land before it is acquired.

When a Minister or public authority requests a council to include provisions in a draft LEP to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the council shall rezone and/or remove the relevant reservation in accordance with the request.

A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:

- a with respect to a request referred to in paragraph (7), that further information is required before appropriate planning controls for the land can be determined, or
- b the provisions of the draft LEP that are inconsistent with the terms of this direction are of minor significance.

The Planning Proposal is consistent with this direction.

Direction 6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

This direction applies when a council prepares a draft LEP to allow a particular development to be carried out.

A draft LEP that amends another environmental planning instrument in order to allow a particular development proposal to be carried out shall either:

- a allow that land use to be carried out in the zone the land is situated on, or
- b rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or
- c allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

A draft LEP shall not contain or refer to drawings that show details of the development proposal.

The Planning Proposal is consistent with this direction.

